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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

COLUMBIA AIRCRAFT MANUFACTURING)
CORPORATION, Debtor-in-)
Possession,)

Plaintiff,)

vs.)

AFFILIATED FM INSURANCE)
COMPANY,)
Defendant.)

Civ. No. 07-CV-6357-TC

ORDER AND OPINION

Coffin, Magistrate Judge:

Before the court are defendant's Motions to Dismiss and/or Strike (#10). For the following reasons, the motions are denied.

Background

Plaintiff, an airplane manufacturer, brought this action against its insurer for breach of contract, bad faith, and intentional interference with existing and prospective business relations. The dispute concerns whether defendant's denial of certain claims made by plaintiff under the parties' business interruption policy violates common law and contract duties. Specifically, plaintiff asserts that the policy covered lost future income attributable to hailstorm damage to its planes.

1 Plaintiff contends that its business was interrupted because the
2 storm required the plaintiff to divert resources from its
3 manufacturing efforts to repair the hail-damaged planes, and that
4 this type of interruption is covered by the policy. Defendant
5 contends that the business interruption insurance instead covers
6 losses arising from damage to the manufacturing operation itself,
7 and because the storm damaged inventory instead, plaintiff's
8 claims exceed the scope of coverage. Plaintiff further asserts
9 that a noncontractual duty of good faith flowed from defendant to
10 plaintiff and further asserts that defendant intentionally
11 interfered with plaintiff's business relationships when it denied
12 coverage, leading to financial hardships including bankruptcy.

13 In this motion, defendant asserts that plaintiff has failed
14 to state claims for bad faith and intentional interference with
15 existing and prospective business relations.¹ A motion to dismiss
16 under Fed. R. Civ. Proc. 12(b)(6) will be granted only if it
17 appears beyond doubt that the plaintiff can prove no set of facts
18 in support of his claim which would entitle him to relief.
19 Conley v. Gibson, 355 U.S. 41, 45 (1957); Allwaste, Inc. v.
20 Hecht, 65 F3d 1523, 1527 (9th Cir. 1995); Parks Sch. of Bus.,
21 Inc. v. Symington, 51 F3d 1480, 1484 (9th Cir. 1995). "The issue
22 is not whether [the] plaintiff will ultimately prevail but
23 whether the [plaintiff] is entitled to offer evidence to support
24 the claims." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Thus,
25 the review is limited to the Complaint, and all allegations of

26
27 ¹ Defendant also moves to dismiss and/or strike a number of
28 claims related to attorney fees and damages. In view of the
disposition on plaintiff's tort claims, I consider those motions
premature and deny them.

1 material fact are taken as true and viewed in the light most
2 favorable to the nonmovant. Buckey v. County of Los Angeles, 968
3 F.2d 791, 794 (9th Cir.), cert. denied, 506 U.S. 999 (1992); Love
4 v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989).

5 Discussion

6 I. Bad Faith

7 In order to state a claim for bad faith (or, tortious breach
8 of the duty of good faith), a plaintiff in a contractual
9 relationship with the defendant must plead facts demonstrating
10 the existence of an independent, noncontractual duty flowing from
11 defendant to plaintiff, and facts demonstrating the breach of
12 that duty. See Georgetown Realty, Inc. v. The Home Ins. Co., 831
13 P.2d 7, 11-12 (Or. 1992) (describing existence of special
14 relationship between insured and insurer, which had fiduciary
15 duty to defend insured).

16 In this case, plaintiff asserts that it shared a special
17 relationship with defendant that gave rise of fiduciary duties
18 that defendant breached. In particular, plaintiff alleges that,
19 beginning at the underwriting stage, defendant assumed a duty of
20 care toward plaintiff when plaintiff provided defendant with
21 specific information concerning plaintiff's procedures and
22 business plans, and when plaintiff relied on defendant to provide
23 plaintiff with insurance coverage that would adequately protect
24 plaintiff from damages arising from events such as the hailstorm
25 that damaged its planes. Complaint, ¶ 47.

26 Defendant argues that, as a matter of Oregon law, no special
27 relationship giving rise to a duty of good faith can exist under
28 these circumstances. In defendant's view, the contractual

1 relationship between a first party insurer to an insured cannot
2 also give rise of an independent tort duty. Thus, the duty at
3 issue in this case is purely contractual, and allegations that
4 plaintiff has set forth in the Complaint describing a special
5 relationship between the parties are subsumed by that duty.

6 Plaintiff contends that the court must look to the nature of
7 the parties' relationship in order to determine whether a special
8 relationship exists, and that inquiry is necessarily fact-laden.
9 Pointing to the allegations mentioned above, plaintiff argues
10 that the Complaint recites sufficient facts to support the
11 existence of a special relationship and breach of duties flowing
12 therefrom.

13 The court agrees with defendant that any recognition of an
14 independent tort duty under the circumstances of this case would
15 likely expand the body of Oregon case law that circumscribes
16 "special relationships" between contracting parties, a result
17 that this court should avoid. See, e.g., Barton v. Hartford Ins.
18 Co. of Midwest, CIV. 03-6164-TC, 2005 WL 174849, *5 (D. Or., Jan.
19 25, 2005) (at summary judgment stage, declining to recognize
20 special relationship between insurer and insured in first party
21 contract).

22 However, I cannot agree that the claim may be resolved at
23 the pleading stage. As plaintiff points out, the Oregon Supreme
24 Court has explained that when discerning whether an independent
25 duty of care exists between contracting parties, the court must
26 "examine the nature of the parties' relationship and compare that
27 relationship to other relationships in which the law imposes a
28 duty on parties to conduct themselves reasonably, so as to

1 protect the other parties to the relationship." Onita Pacific
2 Corp. v. Trustees of Bronson, 843 P.2d 890, 896 (Or. 1992); see
3 also Conway v. Pacific University, 924 P.2d 818, 821 (Or. 1996)
4 (describing factual considerations that indicate existence of a
5 special relationship, such whether the obligee has give
6 responsibility and control over a situation to an obligor), and
7 Bennett v. Farmers Ins. Co. of Oregon, 26 P.3d 785, 799 (Or.
8 2001) ("We begin by examining all aspects of the relationship
9 between the parties to determine whether one had a special
10 responsibility toward the other.").

11 Under our notice pleading system, I understand plaintiff to
12 have alleged facts sufficient (albeit barely so) to state a claim
13 for bad faith. Based on Oregon Supreme Court case law
14 emphasizing attention to the facts that characterize the parties'
15 relationship, it is appropriate to allow plaintiff to fully
16 develop the record, in order to specify in further detail aspects
17 of the relationship that plaintiff has already alleged to give
18 rise to a special relationship. See Thompson v. Allied Mut. Ins.
19 Co., CIV. 99-1076-AS, 2000 WL 264318 (D. Or., Mar. 3, 2000)
20 (denying defendant's Fed. R. Civ. Proc. 12(b)(6) motion to
21 dismiss plaintiffs' claim for tortious breach of good faith and
22 fair dealing over defendant's argument that no extracontractual
23 duty existed where sufficient facts were pleaded).

24 Any prejudice to the defendant in this matter is limited by
25 the fact that the types of facts that plaintiff seeks to develop
26 in order to substantiate the existence of a special relationship
27 will be relevant to the question of the foreseeability of
28 consequential damages on the contract, an issue relevant in

1 subsequent litigation on the contract claim, which defendant has
2 not invoked in this motion to dismiss.

3
4 II. Intentional Interference with Existing and Prospective
5 Business Relations

6 In order to state an intentional interference claim,
7 plaintiff must allege (1) the existence of a professional or
8 business relationship; (2) intentional interference with that
9 relationship; (3) by a third party; (4) accomplished through
10 improper means or for an improper purpose; (5) a causal effect
11 between the interference and damage to the economic relationship;
12 and (6) damages. McGanty v. Staudenraus, 901 P.2d 841, 844 (Or.
13 1995).

14 Here, plaintiff has alleged that it had business
15 relationships with suppliers and others, that defendant
16 improperly and intentionally interfered with those relationships
17 when it denied business interruption coverage and failed to
18 settle plaintiff's claims in good faith with full knowledge of
19 the economic hardships that would result, that the impairment to
20 plaintiff's business relationships was caused by financial
21 hardship attributable to the denied claims, and plaintiff was
22 damaged as a result. Complaint, ¶¶ 51-59. In short, plaintiff
23 has pleaded sufficient facts to state the claim for intentional
24 interference with existing and prospective business relations.

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1 Conclusion

2 Defendant's Motions to Dismiss and/or Strike (#10) are
3 denied.

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5 IT IS SO ORDERED.

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8 Dated this 17th day of March, 2008.

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13 THOMAS M. COFFIN
14 United States Magistrate Judge
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